

UNITED STATES DISTRICT COURT

Southern District of Ohio

UNITED STATES OF AMERICA

v.
Marcelo Alvarez-Guerrero

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:21cr091

USM Number: 26713-479

Karen Savir, Esq.

Defendant's Attorney

THE DEFENDANT: pleaded guilty to count(s) 1 of an Indictment pleaded nolo contendere to count(s) _____ which was accepted by the court. was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 USC 1326(a)	Reentry of a Removed Alien	8/9/2021	1

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

 The defendant has been found not guilty on count(s) _____ Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/13/2022

Date of Imposition of Judgment

Signature of Judge

Michael R. Barrett, United States District Judge

Name and Title of Judge

Date

DEFENDANT: Marcelo Alvarez-Guerrero
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IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Credit for time served.

The court makes the following recommendations to the Bureau of Prisons:

The defendant cooperate with ICE deportation proceedings
Sentence to run concurrent with Butler County case number 2021070973

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____ .

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____ .

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Marcelo Alvarez-Guerrero
CASE NUMBER: 1:21cr091**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

TOTALS	\$ <u>Assessment</u>	\$ <u>Restitution</u>	\$ <u>Fine</u>	\$ <u>AVAA Assessment*</u>	\$ <u>JVTA Assessment**</u>
	\$ 100.00				

- The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ _____ 0.00	\$ _____ 0.00	

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- the interest requirement is waived for the fine restitution.
- the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after the date of this judgment; or
- D Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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STATEMENT OF REASONS

(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

- A. **The court adopts the presentence investigation report without change.**
- B. **The court adopts the presentence investigation report with the following changes.** *(Use Section VIII if necessary)*
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report.)
 - 1. **Chapter Two of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to base offense level, or specific offense characteristics)*
 - 2. **Chapter Three of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility)*
 - 3. **Chapter Four of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations)*
 - 4. **Additional Comments or Findings:** *(include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)*
- C. **The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.**
Applicable Sentencing Guideline: (if more than one guideline applies, list the guideline producing the highest offense level)

II. COURT FINDING ON MANDATORY MINIMUM SENTENCE *(Check all that apply)*

- A. One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.
- B. One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:
 - findings of fact in this case: *(Specify)*
 - substantial assistance (18 U.S.C. § 3553(e))
 - the statutory safety valve (18 U.S.C. § 3553(f))
- C. No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF GUIDELINE RANGE: *(BEFORE DEPARTURES OR VARIANCES)*

Total Offense Level: 12

Criminal History Category: III

Guideline Range: *(after application of §5G1.1 and §5G1.2)* 15 to 21 months

Supervised Release Range: 1 to 3 years

Fine Range: \$ 5,500 to \$ 55,000

- Fine waived or below the guideline range because of inability to pay.

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STATEMENT OF REASONS**IV. GUIDELINE SENTENCING DETERMINATION** (*Check all that apply*)

- A. The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.
- B. The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: (*Use Section VIII if necessary*)
- C. The court departs from the guideline range for one or more reasons provided in the Guidelines Manual.
(Also complete Section V.)
- D. The court imposed a sentence otherwise outside the sentencing guideline system (i.e., a variance). *(Also complete Section VI)*

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL (*If applicable*)**A. The sentence imposed departs:** (*Check only one*)

- above the guideline range
- below the guideline range

B. Motion for departure before the court pursuant to: (*Check all that apply and specify reason(s) in sections C and D*)1. **Plea Agreement**

- binding plea agreement for departure accepted by the court
- plea agreement for departure, which the court finds to be reasonable
- plea agreement that states that the government will not oppose a defense departure motion.

2. **Motion Not Addressed in a Plea Agreement**

- government motion for departure
- defense motion for departure to which the government did not object
- defense motion for departure to which the government objected
- joint motion by both parties

3. **Other**

- Other than a plea agreement or motion by the parties for departure

C. Reasons for departure: (*Check all that apply*)

- | | | |
|---|--|---|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy | <input type="checkbox"/> 5K2.1 Death | <input type="checkbox"/> 5K2.12 Coercion and Duress |
| <input type="checkbox"/> 5H1.1 Age | <input type="checkbox"/> 5K2.2 Physical Injury | <input type="checkbox"/> 5K2.13 Diminished Capacity |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury | <input type="checkbox"/> 5K2.14 Public Welfare |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense |
| <input type="checkbox"/> 5H1.4 Physical Condition | <input type="checkbox"/> 5K2.5 Property Damage or Loss | <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic Weapon |
| <input type="checkbox"/> 5H1.5 Employment Record | <input type="checkbox"/> 5K2.6 Weapon | <input type="checkbox"/> 5K2.18 Violent Street Gang |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.20 Aberrant Behavior |
| <input type="checkbox"/> 5H1.11 Military Service | <input type="checkbox"/> 5K2.8 Extreme Conduct | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct |
| <input type="checkbox"/> 5H1.11 Charitable Service/Good Works | <input type="checkbox"/> 5K2.9 Criminal Purpose | <input type="checkbox"/> 5K2.22 Sex Offender Characteristics |
| <input type="checkbox"/> 5K1.1 Substantial Assistance | <input type="checkbox"/> 5K2.10 Victim's Conduct | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment |
| <input type="checkbox"/> 5K2.0 Aggravating/Mitigating Circumstances | <input type="checkbox"/> 5K2.11 Lesser Harm | <input type="checkbox"/> 5K2.24 Unauthorized Insignia |
| <input type="checkbox"/> Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the <u>Guidelines Manual</u> : (<i>see "List of Departure Provisions" following the Index in the Guidelines Manual</i> .) (Please specify) | | |

D. State the basis for the departure. (*Use Section VIII if necessary*)

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VI. COURT DETERMINATION FOR A VARIANCE (*If applicable*)

A. The sentence imposed is: (*Check only one*)

- above the guideline range
- below the guideline range

B. Motion for a variance before the court pursuant to: (*Check all that apply and specify reason(s) in sections C and D*)

1. Plea Agreement

- binding plea agreement for a variance accepted by the court
- plea agreement for a variance, which the court finds to be reasonable
- plea agreement that states that the government will not oppose a defense motion for a variance

2. Motion Not Addressed in a Plea Agreement

- government motion for a variance
- defense motion for a variance to which the government did not object
- defense motion for a variance to which the government objected
- joint motion by both parties

3. Other

- Other than a plea agreement or motion by the parties for a variance

C. 18 U.S.C. § 3553(a) and other reason(s) for a variance (*Check all that apply*)

- | | | |
|--|---|--|
| <input type="checkbox"/> The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1) | <input type="checkbox"/> Mens Rea | <input type="checkbox"/> Extreme Conduct |
| <input type="checkbox"/> Role in the Offense | <input type="checkbox"/> Victim Impact | <input type="checkbox"/> Dismissed/Uncharged Conduct |
| <input type="checkbox"/> General Aggravating or Mitigating Factors (<i>Specify</i>) | | |
| <input type="checkbox"/> The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1) | | |
| <input type="checkbox"/> Aberrant Behavior | <input type="checkbox"/> Lack of Youthful Guidance | |
| <input type="checkbox"/> Age | <input type="checkbox"/> Mental and Emotional Condition | |
| <input type="checkbox"/> Charitable Service/Good Works | <input type="checkbox"/> Military Service | |
| <input type="checkbox"/> Community Ties | <input type="checkbox"/> Non-Violent Offender | |
| <input type="checkbox"/> Diminished Capacity | <input type="checkbox"/> Physical Condition | |
| <input type="checkbox"/> Drug or Alcohol Dependence | <input type="checkbox"/> Pre-sentence Rehabilitation | |
| <input type="checkbox"/> Employment Record | <input type="checkbox"/> Remorse/Lack of Remorse | |
| <input type="checkbox"/> Family Ties and Responsibilities | <input type="checkbox"/> Other: (<i>Specify</i>) | |
| <input type="checkbox"/> Issues with Criminal History: (<i>Specify</i>) | | |
| <input type="checkbox"/> To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A)) | | |
| <input type="checkbox"/> To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B)) | | |
| <input type="checkbox"/> To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C)) | | |
| <input type="checkbox"/> To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D)) | | |
| <input type="checkbox"/> To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D)) | | |
| <input type="checkbox"/> To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D)) | | |
| <input type="checkbox"/> To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) (<i>Specify in section D</i>) | | |
| <input type="checkbox"/> To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7)) | | |
| <input type="checkbox"/> Acceptance of Responsibility | <input type="checkbox"/> Conduct Pre-trial/On Bond | <input type="checkbox"/> Cooperation Without Government Motion for Departure |
| <input type="checkbox"/> Early Plea Agreement | <input type="checkbox"/> Global Plea Agreement | |
| <input type="checkbox"/> Time Served (<i>not counted in sentence</i>) | <input type="checkbox"/> Waiver of Indictment | <input type="checkbox"/> Waiver of Appeal |
| <input type="checkbox"/> Policy Disagreement with the Guidelines (<i>Kimbrough v. U.S., 552 U.S. 85 (2007)</i>): (<i>Specify</i>) | | |
| <input type="checkbox"/> Other: (<i>Specify</i>) | | |

D. State the basis for a variance. (*Use Section VIII if necessary*)

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STATEMENT OF REASONS

VII. COURT DETERMINATIONS OF RESTITUTION

A. Restitution Not Applicable.

B. Total Amount of Restitution: \$ _____

C. Restitution not ordered: (Check only one)

1. For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
2. For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
3. For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
4. For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s)'s losses were not ascertainable (18 U.S.C. § 3664(d)(5)).
5. For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
6. Restitution is not ordered for other reasons. (Explain)

D. Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE (If applicable)

Defendant's Soc. Sec. No.: Not Applicable

Defendant's Date of Birth: 9/6/1972

custody of the USMS
Defendant's Residence Address: _____

Defendant's Mailing Address: same as above

Date of Imposition of Judgment

1/19/2022

Signature of Judge

Michael R. Barrett, United States District Judge

Name and Title of Judge

Date Signed